

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 701 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

PADMABEN W/O KISHORBHAI BABUBHAI

Versus

STATE OF GUJARAT

Appearance:

MR RAJESH M AGRAWAL for Petitioner
MR.H.F.MEHTA, learned A.P.P. for Respondent No. 1
MR HARSHAD J SHAH for Respondent No. 2
MR KI SHAH for Respondent No. 3

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 14/10/96

ORAL JUDGEMENT

Rule.

2. The matter is heard at length at this stage of admission and I therefore, proceed to decide it finally.

3. The present petition is filed by Padmaben widow

of Kishorbhai Babubhai Intwala-the original complainant in Criminal Case No.7554/94 and in this petition the legality and validity of the order passed by the learned Sessions Judge, Bharuch in Criminal Revision Application No.90 of 1995 and the order passed by the learned Chief Judicial Magistrate, 4th Court, Bharuch on 21-10-95 below Exh.19 in the Criminal Case No.7554 of 1994 are being challenged.

4. The present revision applicant has filed the Criminal Case No.7554 of 1994 against the respondent No.2 Dhirajbhai Harkishan Intwala for the commission of alleged offence punishable under Section 406 and 420 of the Indian Penal Code. It is her case that Fiat Car No.G.R.V.8081 was of the ownership of her late husband Kishorbhai Babubhai Intwala and the said car was given on hire to the respondent No.2 with an agreement to pay Rs.6,000/- as hire charges every month and and out of Rs.6,000/- to pay Rs.3,500/- to the Bank from which the loan was taken to purchase the said car. It is her case that after the death of her husband, the respondent No.2 stopped making payment to her and when she asked him about the same, he also started raising contention that he was the real owner of the car and her husband was only a Benamidar and he refused to make payment as well as delivery of the car though she had served a notice on him and thereby he has committed an offence punishable under Sections 406 and 420 of the Indian Penal Code.

5. In the said Criminal Case, the car in question was seized, and, thereafter, the respondent No.2 filed the application at Exh.19 under Section 451 of the Criminal Procedure Code for getting the interim custody of the said car. After hearing both the sides, the learned Judicial Magistrate First Class passed an order dtd.21-10-95 and by the said order, he gave the custody of the said car to the respondent No.2 on certain conditions. Being aggrieved by the said decision, the present applicant had preferred Criminal Revision Application No.90 of 1995 in the court of Sessions Judge, Bharuch and the learned Sessions Judge by his judgment dtd. 30-5-96 rejected the said petition, but modified the order regarding custody given to respondent No.2 by putting certain additional conditions on respondent No.2 with a view to protect interest of the petitioner.

6. The present applicant-petitioner has come before this Court by contending that the said order passed by the learned Sessions Judge as well as by the learned Judicial Magistrate were contrary to the provisions of

law, and, therefore, this court should exercise its jurisdiction under Articles 226 and 227 of the Constitution of India. This claim is made by the applicant-petitioner in view of the fact that her Revision Application has been dismissed and she cannot file a second Revision Application before this court. It is the contention of the applicant that the said decision is contrary to the provisions of the Prevention of Benami Transaction Act. This claim is made by the applicant-petitioner only in order to induce this court to exercise the powers under Articles 226 & 227 of the Constitution of India. But if the order of the learned Judicial Magistrate as well as the learned Sessions Judge are carefully read, then it would be quite clear that they have not made any observations or recorded any findings contrary to the provisions of the Prevention of Benami Transaction Act and therefore, the said claim made by the petitioner in order to sustain the present petition under Article 226 of the Constitution of India is not true and correct and the same seems to have been made only with a view to sustain this proceeding.

7. As per the case of the complainant herself the vehicle in question was given by her husband on hire to the respondent No.2 and as per the terms of the contract between the parties, the respondent No.2 was to pay Rs.2,500/- to her husband and Rs.3,500/- to the Bank from which the loan was taken to purchase the said vehicle. Thus, the complainant herself has in her complaint stated that the possession of the vehicle was given to the respondent No.2 on account of a legal contract of hire between her husband and the respondent No.2. Thus, the respondent No.2 has come to in the possession of the vehicle under a lawful contract between the parties. Therefore, in the circumstances, the claim that the respondent No.2 has committed an offence punishable under Section 420 of the Indian Penal Code could not at all be sustained. When the possession of the vehicle was given to respondent No.2 on account of contract of hire between the parties, it would also not amount to an entrustment. Now apart from this legal aspect, admittedly the vehicle was in possession of the respondent No.2 on the date the complaint has been filed, then admittedly the respondent No.2 was given the possession of the vehicle on account of an agreement of hire. No doubt, it is the claim of the complainant that she has terminated the said agreement or contract. Therefore, in view of this admitted position, what has been held by the learned Sessions Judge in his order is that the real dispute between the parties seems to be of civil nature, and, therefore,, in the circumstances, the respondent No.2 who was in possession

of the vehicle was entitled to have the temporary custody of the vehicle and accordingly the order under Section 451 of the Code of Criminal Procedure has been passed by the learned Judicial Magistrate which has been confirmed by the learned Sessions Judge by modifying the said order by making provision to protect the interest of the present complainant. Therefore, in the circumstances, it cannot be said that there is any illegality committed either by the learned Judicial Magistrate or by the learned Sessions Judge in passing the said order. In the circumstances, there are no grounds to interfere with the said order.

8. I, therefore, held that the present petition will have to be dismissed. The petition is dismissed. Rule is discharged.

The learned advocate for the petitioner wants to stay the operation of this order passed today, but in the circumstances of the case, I am of the view that it will be the misuse of law to further stay the operation of the said order. I, therefore, reject the said prayer.

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